Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

No. 65, Original

IN THE

Supreme Court of the United States

October Term, 1987

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO,

Defendant.

NEW MEXICO'S MOTION TO STAY ADOPTION OF PECOS RIVER MASTER'S FINAL REPORT

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July 22, 1988

R. VERGARA PRINTING COMPANY · SANTA FE, NEW MEXICO

No. 65, Original

IN THE

Supreme Court of the United States

October Term, 1987

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO,

Defendant.

NEW MEXICO'S MOTION TO STAY ADOPTION OF PECOS RIVER MASTER'S FINAL REPORT

The State of New Mexico requests the Court to stay adoption of the Final Report of the Pecos River Master pending the Special Master's determination of stateline departures for the years 1984 through 1986; as grounds for this motion, New Mexico alleges:

1. Article III.D of the Amended Decree entered by this Court on March 28, 1988, states that: "Unless stayed by this Court, any Final Report . . . shall be effective upon its adoption, and shall be subject to review by this Court only on a showing that the Final Determination is clearly erroneous."

2. On June 23, 1988, the Pecos River Master served on New Mexico and Texas the Final Report of the River Master for water year 1987. In the Final Report the River Master found that New Mexico is credited with an overage of 15,400

acre-feet for water year 1987. Final Report at 1. An "overage" is the amount of water delivered by New Mexico in any water year which exceeded the Pecos River Compact Article III(a) obligation for that year. Amended Decree, Article I.A.3.

3. The Compact provides that determination of stateline departures must be based on three-year periods reckoned in continuing progressive series. Pecos River Compact, Article VI(b).

4. The River Master's calculation of the departure for water year 1987 required calculations of the annual flood inflows for water years 1985 and 1986 as well as 1987. Final Report at 2.

5. At the Special Master hearing held on October 15, 1987, New Mexico and Texas agreed that the Special Master would determine stateline departures for the years 1984 through 1986, which would require calculations of annual flood inflows for each of those years. New Mexico and Texas also agreed that section B.3.g of the Pecos River Master's Manual, relating to the determination of base inflows in the Acme to Artesia reach of the river, would not apply to the years 1984 through 1986 unless and until the Special Master had determined this issue of fact at a hearing set by the Special Master for February 1988. Tr. at 35-36 (October 15, 1987). The February 1988 hearing has been postponed to September 1988. The annual flood inflow calculations for 1985 and 1986 included in the River Master's Final Report might well be in conflict with those to be made by the Special Master.

6. The Pecos River Master's Final Report computed the departure for 1987 using the disputed provision in section B.3.g of the Pecos River Master's Manual to calculate annual flood inflows for 1985 and 1986, although the River Master avoided making any express findings on departures for those years.

WHEREFORE, New Mexico requests the Court to stay adoption of the River Master's Final Report for water year 1987 until after the Court acts on the report of the Special Master to be issued after the September 1988 hearing. New Mexico requests the stay to protect its opportunity to seek a review of the River Master's Final Report after the Court's action on the Special Master's report concerning those issues of fact which the states stipulated would be reserved for determination by the Special Master. If the Court stays adoption of the River Master's Final Report, there could be no prejudice to Texas because the River Master found a substantial overage in 1987.

Respectfully submitted,

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By: PETER THOMAS WHITE

July 22, 1988

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No. 65, Original

IN THE
Supreme Court of the United States
OCTOBER TERM, 1987

STATE OF TEXAS,

Plaintiff,

vs.

STATE OF NEW MEXICO,

Defendant.

Texas' Response Opposing New Mexico's Motion to Stay

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August 4, 1988

No. 65, Original

IN THE
Supreme Court of the United States
OCTOBER TERM, 1987

STATE OF TEXAS,

Plaintiff,

vs.

STATE OF NEW MEXICO,

Defendant.

Texas' Response Opposing New Mexico's Motion to Stay

Texas opposes New Mexico's Motion to Stay Adoption of Pecos River Master's Final Report and urges that it be overruled on the following grounds:

Background and New Mexico's Request

Consistent with his obligations in the phase of this case requiring continuing administration of the Court's Amended Decree of March 28, 1988 ("Decree Administration Phase"), the River Master issued his first Final Report on June 23, 1988. In it, he determined that New Mexico delivered 15,400 acre-feet of water more than its obligation under Article III(a) of the Pecos River Compact for water year 1987.

For that water year, the Manual governing the River Master directs that flood inflows be calculated by averaging the annual flood inflows for 1985, 1986, and 1987. *See* Manual, Item A.1, second and third sentences. One element in determining annual flood inflows is the base inflow for the Acme-to-Artesia reach of

the river. Item B.3.g of the Manual directs that this base inflow number be the one "furnished" by the United States Geological Survey.

New Mexico seeks to stay adoption of the Final Report until after the Court acts on the Special Master's report following the evidentiary hearing in the other phase of this case, which concerns the remedy for New Mexico's Compact violations during the 1950-1986 period ("Remedies Phase").* New Mexico's premise is that the River Master must calculate the flood inflows for 1985 and 1986 using the Acme-to-Artesia base inflow method and data that this Court ultimately approves for those two years in the Remedies Phase, notwithstanding Item B.3.g of the Manual. The premise is substantively faulty, and the motion seeks a remedy that is unavailable when, as here, it is unaccompanied by a timely motion seeking review of the River Master's action.

Argument: Substantive Invalidity

The Decree Administration Phase and the Remedies Phase of this case now are entirely separate from one another. The parties agreed upon this approach in a hearing before the Special Master. Tr. 18-25, 35-36 (10/15/87). Contrary to the assumption implicit in the stay motion, the two phases do not overlap even for the limited purpose of determining flood inflows for 1985 and 1986.

The remote possibility that in the future the Court might adopt a different method for determining 1985 and 1986 flood inflows in the ongoing Remedies Phase than already has been adopted for those years when they are averaged with flood inflows for 1987 in the Decree Administration Phase is legally irrelevant. The River Master's duty is to follow directives the Court already has given him, not those it might in the future give someone, such as a Special Master, acting in a different capacity.

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* The unfortunate death of the Special Master, Mr. Charles J. Meyers, likely will result in an indefinite postponement of the evidentiary hearing in the Remedies Phase.

In the last report forwarding his recommendations to the Court, the Special Master noted that the issue of the shortfalls, if any, for the period 1984 through 1986 was to be tried in the Remedies Phase of the case. 1987 Report, at 1. He emphasized that the objective of the proposed amended decree was "so that a *complete charter* for the enforcement of the Court's judgment is available in one place for the River Master." *Id.*, at 2 (emphasis added). The Court completed the case's bifurcation by approving the 1987 Report and adopting its proposed amended decree. *Texas v. New Mexico*, 108 S.Ct. 1201 (1988). The only connections remaining between the two phases are those of history and legal preclusion.

Article III.B.1.b of the "complete charter" embodied in the Amended Decree provides an explicit directive to the River Master for water year 1987: calculate any overage "pursuant to the methodology set forth in the Manual." It does not qualify this directive by suggesting that the River Master delay final action past designated deadlines while awaiting further directives from the Special Master and the Court on whether and how the Manual's methodology should be changed.

As New Mexico acknowledges in paragraph 6 of its motion with regard to the computation in question, the River Master precisely implemented the Court's explicit directive. New Mexico's admission that the River Master followed the Amended Decree, especially when coupled with the explicitness of the decree, suffices at the threshold to defeat its stay request. *Cf. Lucas v. Townsend*, 108 S.Ct. 1763, 1764 (Kennedy, Circuit Justice 1988) (stay inappropriate when there is not a "fair prospect" that five Justices will conclude that the case was erroneously decided below).

Argument: Procedural Futility

Aside from its substantive invalidity, New Mexico's stay request must fail because it is unaccompanied by a timely motion seeking review of the River Master's Final Report. Article III.D of the Amended Decree requires that a motion for review of the River Master's Final Report be filed within thirty days of its adoption. The Final Report was adopted on June 23, 1988, and New Mexico did not file a motion for review by July 23rd, thirty days from its adoption. Therefore, the deadline has passed for New Mexico to obtain review of the River Master's Final Report. Because New Mexico seeks to stay the effectiveness of a River Master Final Determination that is no longer reviewable, its stay request is futile and should be rejected.

Conclusion

The relief sought by New Mexico would reestablish the connection between the Remedies Phase and the Decree Administration Phase of this case that the Court explicitly severed when it approved the Special Master's 1987 Report and adopted the Amended Decree. New Mexico's motion to stay should be overruled, thereby maintaining the integrity of the Amended Decree as a complete charter for the River Master.

Respectfully submitted,

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First Assistant Attorney General

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August 4, 1988

2

Supreme Court, U.S.

October Term, 1989

No. 65 Original

TEXAS,

Plaintiff,

vs.

NEW MEXICO

Joint Motion of Stipulated Judgment

2/23.13

Grant 2/26/90

Filed 2/7/90, 19

IN THE SUPREME COURT OF THE UNITED STATES

No. 65, Original

STATE OF TEXAS,	)
	)
Complainant,	)
	)
v.	)
	)
STATE OF NEW MEXICO,	)
	)
Defendant.	)

SPECIAL MASTER'S RECOMMENDATION FOR ENTRY OF STIPULATED JUDGMENT

I recommend that the Joint Motion for Entry of Stipulated Judgment be granted and that the Court enter the Stipulated Judgment. The Joint Motion for Entry of Stipulated Judgment, Exhibit A, The Stipulated Judgment, and Exhibit B, which the parties attached concerning disbursement of the funds, are attached.

Dated: February 6, 1990.

D. Monte Pascoe, Special Master

No. 65, Original

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

STATE OF TEXAS, Plaintiff,

v.

STATE OF NEW MEXICO, Defendant.

JOINT MOTION FOR ENTRY OF STIPULATED JUDGMENT

Texas and New Mexico respectfully move the Court to enter the Stipulated Judgment attached hereto as Exhibit A, with the monetary payment to be disbursed in accordance with Exhibit B hereto. The parties state that they have fully compromised and settled Texas's claims for relief, other than claims for relief embodied in the March 28, 1988 Amended Decree and actions thereunder, for New Mexico's breaches of the Pecos River Compact for the years 1952 through 1986.

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Attorney General of Texas

MARY F. KELLER
First Assistant Attorney General

RENEA HICKS
Special Assistant Attorney
General and Counsel of Record

NANCY N. LYNCH
Assistant Attorney General
Chief, Environmental
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HAL STRATTON
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RODEY, DICKASON, SLOAN, AKIN &
ROBB, P.A.

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ATTORNEYS FOR THE STATE
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NEW MEXICO

No. 65, Original

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

STATE OF TEXAS, Plaintiff,

v.

STATE OF NEW MEXICO, Defendant.

EXHIBIT A TO JOINT MOTION FOR ENTRY OF STIPULATED JUDGMENT

No. 65, Original

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

STATE OF TEXAS, Plaintiff,

v.

STATE OF NEW MEXICO, Defendant.

STIPULATED JUDGMENT

Based upon the recommendation of the Special Master, the Joint Motion for Entry of Stipulated Judgment ("Joint Motion") is granted, and the Court hereby enters judgment as follows:

1. On or before March 1, 1990, New Mexico shall pay Texas $14,000,000, to be disbursed by Texas in accordance with Exhibit B to the Joint Motion, by either delivering a check or draft in that amount made payable to the State of Texas or transferring that amount to the State of Texas by electronic wire transfer.

2. Texas releases New Mexico from all claims for equitable or legal relief, other than the relief embodied in the March 28, 1988 Amended Decree and actions thereunder, arising out of New Mexico's breaches of the Pecos River Compact for the years 1952 through 1986, plus all claims for attorneys' fees and other costs incurred prior to August 10, 1989.

3. Nothing herein affects the Court's March 28, 1988 Amended Decree and actions thereunder.

APPROVED:

JIM MATTOX
Attorney General of Texas

MARY F. KELLER
First Assistant Attorney General

RENEA HICKS
Special Assistant Attorney
General and Counsel of Record

NANCY N. LYNCH
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By: _____
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ATTORNEYS FOR THE STATE OF
NEW MEXICO

REVIEWED AND RECOMMENDED FOR ENTRY:

_____
D. Monte Pascoe, Special Master

No. 65, Original

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

STATE OF TEXAS, Plaintiff,

v.

STATE OF NEW MEXICO, Defendant.

EXHIBIT B TO JOINT MOTION FOR ENTRY OF STIPULATED JUDGMENT

Texas shall deposit $13,800,000 in the Texas Water Assistance Fund No. 480 of the Texas Water Development Board ("Board"), created pursuant to Chapter 15 of the Texas Water Code, to be used for agricultural and irrigation projects (including associated water quality improvement projects) and any necessary associated studies in the Texas counties of Loving, Ward, Reeves, and Pecos. In funding such projects and studies, the Board shall give preference to projects and studies affecting surface water irrigators in the Red Bluff Water Power Control District in the four designated Texas counties, if appropriate. The remaining $200,000 may be treated by the Attorney General of the State of Texas as attorneys' fees or investigative costs; provided, however, Texas and New Mexico agree that any use of the settlement funds in this manner does not constitute, and shall not be construed as, an admission, express or implicit, that New Mexico has any liability for Texas' attorneys' fees and costs incurred in this litigation.

IN THE SUPREME COURT OF THE UNITED STATES

No. 65, Original

STATE OF TEXAS,	)
	)
Complainant,	)
	)
v.	)
	)
STATE OF NEW MEXICO,	)
	)
Defendant.	)

SPECIAL MASTER'S RECOMMENDATION FOR ENTRY OF STIPULATED JUDGMENT

I recommend that the Joint Motion for Entry of Stipulated Judgment be granted and that the Court enter the Stipulated Judgment. The Joint Motion for Entry of Stipulated Judgment, Exhibit A, The Stipulated Judgment, and Exhibit B, which the parties attached concerning disbursement of the funds, are attached.

Dated: February 6, 1990.

D. Monte Pascoe, Special Master

THE ATTORNEY GENERAL OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

January 31, 1990

D. Monte Pascoe, Special Master
Ireland, Stapleton, Pryor & Pascoe
1675 Broadway, Suite 2600
Denver, Colorado 80202

Re: *Texas v. New Mexico*, No. 65, Original

Dear Mr. Pascoe:

Enclosed are originals of the documents which the parties have completed and signed to formalize their agreement in the phase of the case before you. They are:

1. Joint Motion for Entry of Stipulated Judgment;

2. Stipulated Judgment (which is Exhibit A to the Joint Motion); and

3. Exhibit B to the Joint Motion.

The parties submit these documents for your review and ask that you recommend that the Supreme Court enter the Stipulated Judgment, which contains a line at the end for you to signify your recommendation.

Would you please notify us when you have acted on the joint motion? If you forward the documents unchanged to the Court with a favorable recommendation, a copy of your transmittal letter is sufficient notice to us.

Sincerely,

Renea Hicks

Renea Hicks
Special Assistant Attorney General

P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2085

cc: Henry M. Bohnhoff
Nancy N. Lynch
Peter White
Randy Childress

(5)

SUPREME COURT OF THE UNITED STATES

No. 65, Orig.

STATE OF TEXAS, PLAINTIFF *v.* STATE OF NEW MEXICO, DEFENDENT

ON BILL OF COMPLAINT

[February 26, 1990]

Based upon the recommendation of the Special Master, the Joint Motion for Entry of Stipulated Judgment ("Joint Motion") is granted, and the Court hereby enters judgment as follows:

STIPULATED JUDGMENT

1. On or before March 1, 1990, New Mexico shall pay Texas $14,000,000, to be disbursed by Texas in accordance with Exhibit B to the Joint Motion which is herein reproduced, by either delivering a check or draft in that amount made payable to the State of Texas or transferring that amount to the State of Texas by electronic wire transfer.

2. Texas releases New Mexico from all claims for equitable or legal relief, other than the relief embodied in the March 28, 1988 Amended Decree and actions thereunder, arising out of New Mexico's breaches of the Pecos River Compact for the years 1952 through 1986, plus all claims for attorneys' fees and other costs incurred prior to August 10, 1989.

3. Nothing herein affects the Court's March 28, 1988 Amended Decree and actions thereunder.

EXHIBIT B

Texas shall deposit $13,800,000 in the Texas Water Assistance Fund No. 480 of the Texas Water Development Board ("Board"), created pursuant to Chapter 15 of the Texas Water Code, to be used for agricultural and irrigation projects (including associated water quality improvement

projects) and any necessary associated studies in the Texas counties of Loving, Ward, Reeves, and Pecos. In funding such projects and studies, the Board shall give preference to projects and studies affecting surface water irrigators in the Red Bluff Water Power Control District in the four designated Texas counties, if appropriate. The remaining $200,000 may be treated by the Attorney General of the State of Texas as attorneys' fees or investigative costs; provided, however, Texas and New Mexico agree that any use of the settlement funds in this manner does not constitute, and shall not be construed as, an admission, express or implicit, that New Mexico has any liability for Texas' attorneys' fees and costs incurred in this litigation.